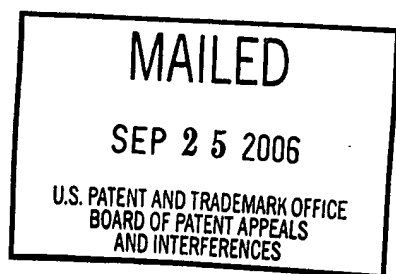


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte JOSEPH H. CONTILIANO, JOSEPH JOHN HAMMER, ALIREZA REZANIA,
ANGELO G. SCOPELIANOS, MURTY NARAYAN VYAKARNAM, MARK CHARLES
ZIMMERMAN



Appeal No. 2006-1891
Application No. 09/874,218

ON BRIEF

Before CRAWFORD, BAHR, and FETTING, Administrative Patent Judges.
CRAWFORD, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 to 14,
which are all of the claims pending in this application.

The appellants' invention relates to bioabsorbable tissue scaffold implant devices that facilitate repair and regeneration of diseased or damaged musculoskeletal tissue. (Specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

The Prior Art

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Gresser et al. (Gresser)	US 2001/0008980 A1	Jul. 19, 2001
Melican et al. (Melican)	US 2002/0120348 A1	Aug. 29, 2002

The Rejections

Claims 1 to 5, 7 to 11, 13 and 14 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Gresser.

Claims 1 to 14 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Melican.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the answer (mailed March 24, 2005) for the examiner's complete reasoning in support of the rejections, and to the brief (filed February 28, 2005) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

We turn first to the examiner's rejection of claims 1 to 5, 7 to 11 and 13 as being anticipated by Gresser. We initially note that to support a rejection of a claim under 35 U.S.C. § 102(b), it must be shown that each element of the claim is found, either expressly described or under principles of inherency, in a single prior art reference. See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

The examiner finds:

Gresser et al. discloses in Figures 4a-4b and paragraphs 8-10, 33, 38, 47, and 71-72 a resorbable tissue scaffold implant comprising a foam tissue scaffold component partially encapsulating a fixation component comprising threads 41 serving as anchors. Pores or through holes (43-46) fulfill the open-cell pore structure. Hydroxyapatite is described in paragraph 47 as a reinforcement component [answer at page 3].

We agree with the examiner and thus we will sustain this rejection.

Appellants argue that Gresser does not describe an implant device that comprises a foam tissue scaffold that partially encapsulates a fixation component. In

appellants' opinion while a foam scaffold may be retained in the fixation component, the foam scaffold does not partially encapsulate the fixation component.

We don't find this argument persuasive because Gresser clearly discloses that the foam coating may surround or coat the implant device or fixation device (paragraph 0072). In this regard it is apparent the examiner regards the fixation component to be the threads 42 depicted in Fig. 4a.

With respect to the rejection of claim 14 as anticipated by Gresser, appellants argue that Gresser fails to disclose reinforcing means.

We agree. In our view, Gresser's buffer component can not be considered a reinforcement component because although it protects the device from acidic degradation (paragraphs 0043 to 0047), it does not reinforce the structure of the device.

Therefore, we will not sustain this rejection as it is directed to claim 14.

We turn next to the examiner's rejection of claims 1 to 14 under 35 U.S.C. § 102(e) as being anticipated by Melican.

The examiner finds:

Melican et al. discloses in Figures 1-5 and paragraphs 10-12,22-31,36,41-42,46-51, and 59-63 multiple embodiments of a resorbable tissue scaffold implant comprising a open cell porous foam tissue scaffold component 12, a partially encapsulated fixation component, and reinforcement components. Reinforcement may be accomplished by reinforcement

mesh(s) 14, reinforcement solids in the foam (paragraphs 46-51), and/or by a fibrous layer (paragraphs 59-63). The fixation component as claimed, may be the fibrous layer and/or reinforcement mesh(s) 14. The fibrous layer may include anchors such as non-absorbable staples [answer at page 3].

As such, the examiner is of the view that foam component 12 may be considered a foam tissue scaffold component, the mesh 14 may be considered a fixation component that supports the component 12 and that the solids (paragraph 46 to 51) may be considered reinforcing components as broadly claimed.

Appellants argue that Melican does not describe a fixation device which includes both a tissue scaffold support and an anchor means.

In our view, the mesh 14 provides support for the foam component, at least to some extent and therefore is a scaffold support and the sutures or staples connected to the mesh 14 are anchors as they anchor the device within the body. As such, the fixation device includes a scaffold support and an anchor means. Therefore, we will sustain this rejection.

In summary:

The examiner's rejection of claims 1 to 5, 7 to 11 and 13 under 35 U.S.C. § 102(e) as being anticipated by Gresser is sustained. The examiner's rejection of claim 14 under 35 U.S.C. § 102(e) as being anticipated by Gresser is not sustained. The examiner's rejection of claims 1 to 14 under 35 U.S.C. § 102(e) as being anticipated by Melican is sustained.

No time period for taking any subsequent action in connection with this appeal
may be extended under 37 CFR § 1.136(a).


AFFIRMED



MURRIEL E. CRAWFORD
Administrative Patent Judge



JENNIFER D. BAHR
Administrative Patent Judge



ANTON W. FETTING
Administrative Patent Judge

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Appeal No. 2006-1891
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Page 7

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